

# Board of Education Agenda Item

Item: \_\_\_\_\_ E. \_\_\_\_\_

Date: \_\_\_\_\_ June 22, 2005 \_\_\_\_\_

**Topic:** First Review of Proposed Regulation Governing Reduction of State Aid When the Length of the School Term Is Below 180 Teaching Days or 990 Teaching Hours Under the Fast Track Provisions of the Administrative Process Act

**Presenter:** Ms. Anne D. Wescott, Assistant Superintendent for Policy and Communications

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## Origin:

\_\_\_\_\_ Topic presented for information only (no board action required)

X Board review required by  
    X State or federal law or regulation  
    \_\_\_\_\_ Board of Education regulation  
    \_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_ Action requested at this meeting

X Action requested at future meeting: July, 27, 2005 (date)

## Previous Review/Action:

\_\_\_\_\_ No previous board review/action

X Previous review/action

date January 12, 2005

action Approval of emergency regulations

**Background Information:** The Board of Education promulgated the *Regulation Governing Reduction of State Aid When the Length of the School Term Is Below 180 School Days*, 8 VAC 20-520, in response to § 22.1-98 of the Code of Virginia. The 2004 Virginia General Assembly passed three bills that amended this section of the Code and made the changes effective from passage of the bills. The bills were HB 1256 (Van Landingham), SB 452 (Whipple), and HB 575 (Hamilton). HB 1256 and SB 452 clarified the schedule of makeup days and circumstances in which a waiver may be granted by the Board of Education so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations. HB 575 permitted the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency.

HB 575 and SB 452 had emergency enactment clauses and were effective upon passage. HB 1256 and SB 452 required the Board of Education to promulgate regulations to implement the provisions to be effective

within 280 days of enactment. The emergency regulation was approved for final review by the Board of Education on January 12, 2005 and became effective on February 25, 2005. They remain in effect until February 25, 2006.

**Summary of Major Elements:** This regulation incorporates the changes required by the amendments to the Code of Virginia and clarifies certain other requirements. The changes include definitions of “severe weather conditions or other emergency situations” and “declared state of emergency.” The regulation also includes authorization for school divisions to make up missed teaching days by providing equivalent teaching hours, specific requirements for the number of teaching days or teaching hours that must be made up based on the number of days a school has been closed, and a provision for the Board of Education to waive the requirement that school divisions provide additional teaching days or hours to compensate for school closings resulting from a declared state of emergency. Further, the proposed regulation authorizes the Superintendent of Public Instruction to approve reductions in the school term without a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund.

The proposed regulation requires local school divisions to include in requests for waivers evidence of efforts that have been made by the school division to reschedule as many days as possible and to certify that every reasonable effort has been made to make up lost teaching days or hours before requesting a waiver of this requirement. The proposed permanent regulation mirrors the emergency regulation that was approved by the Board at its January 12, 2005 meeting and is in effect now.

**Superintendent's Recommendation:** The Superintendent of Public Instruction recommends that the Board of Education waive first review, approve the attached Regulation Governing Reduction of State Aid When the Length of the School Term Is Below 180 Teaching Days or 990 Teaching Hours, and authorize the Department of Education staff to proceed with the requirements of the Administrative Process.

**Impact on Resources:** The promulgation of the regulation as proposed is expected to have a minimal fiscal impact on the local school divisions or on the Department of Education. It should be noted that additional reporting requirements place an administrative burden on school divisions, especially those that are small. However, it is expected that the administrative burden due to the new reporting requirement in the proposed regulations could be absorbed within existing resources at the both the state and local level.

**Timetable for Further Review/Action:** It is anticipated that this item will be placed on the Board of Education’s July 27, 2005, agenda for final review. Following the Board’s final approval of the proposed regulation, the fast track provisions of the Administrative Process Act will be initiated. All appropriate entities, including local division superintendents, will be notified and given opportunity to comment.

**Board of Education**

**PROPOSED REGULATIONS GOVERNING REDUCTION OF STATE AID  
WHEN LENGTH OF SCHOOL TERM BELOW 180 TEACHING DAYS OR 990  
TEACHING HOURS (8 VAC 20-520-10 et seq.)**

**PROPOSED REGULATIONS GOVERNING REDUCTION OF STATE AID  
WHEN LENGTH OF SCHOOL TERM BELOW 180 TEACHING DAYS OR 990  
TEACHING HOURS  
8 VAC 20-520-10 et seq.**

**~~REGULATIONS GOVERNING REDUCTION OF STATE AID WHEN LENGTH  
OF SCHOOL TERM BELOW 180 SCHOOL DAYS~~**

8VAC20-520-5. Definitions.

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Declared state of emergency” means the declaration of an emergency before or after an event, by the Governor or by officials in a locality, that requires the closure of any or all schools within a school division.

“Instructional time” means the period that students are in school on a daily or annual basis as defined in the *Regulations Establishing Standards for Accrediting Public Schools in Virginia*, 8 VAC 20-131.

“Severe weather conditions or other emergency situations” means those circumstances presenting a threat to the health or safety of students that result from severe weather conditions or other emergencies, including, but not limited to, natural and man-made disasters, energy shortages or power failures.

“Teaching days” means days when instruction is provided.

“Teaching hours” means hours when instruction is provided.

**~~8VAC20-520-10. Length of school term.~~**

~~School divisions which are forced to close more than 15 days during the school term because of severe weather, energy shortages, or power failure may be eligible for a waiver of the 180-day requirement.~~

~~Waiver of days lost beyond the first 15 is not automatic. A request must be made and evidence must be presented to indicate that every reasonable effort has been made to reschedule as many days as possible. Before approving a waiver, the state Board of Education must be satisfied that the lost time cannot be made up.~~

~~The state Board of Education will expect school divisions to exhaust every~~

## **Board of Education**

### **PROPOSED REGULATIONS GOVERNING REDUCTION OF STATE AID WHEN LENGTH OF SCHOOL TERM BELOW 180 TEACHING DAYS OR 990 TEACHING HOURS (8 VAC 20-520-10 et seq.)**

~~possibility for making up lost days before requesting a waiver of the 180-day requirement.~~

~~The request for waiver shall be forwarded to the Superintendent of Public Instruction after it has been approved by the local school board.~~

~~Make-up days should be the regular length, except as provided in the regulations on the length of the school day. (One day a week may be shortened to no less than four hours, exclusive of lunch, if the total number of days average at least 5 ½ hours in length.)~~

~~The first 15 days lost cannot be made up by extending the length of the school day.~~

~~Applications for waiver to be considered by the state Board of Education at its May meeting must be received by April 30 of the school year for which the waiver is requested.~~

#### **8VAC20-520-20. Length of school term.**

A. The length of every school's term in every school division shall be a minimum of 180 teaching days or 990 teaching hours in any school year.

B. Nothing in these regulations shall prohibit a school division from exceeding the 180 teaching day or 990 teaching hour requirement in any of its schools.

#### **8VAC20-520-30. Completion of teaching hours.**

A. When severe weather conditions or other emergency situations have resulted in the closing of a school or schools in a school division for fewer than five days, the school or schools shall make up all missed days by adding teaching days to the school calendar or extending the length of the teaching day.

B. When severe weather conditions or other emergency situations have resulted in the closing of a school or schools in a school division for five or more days, the school or schools shall make up the missed days in accordance with § 22.1-98 of the Code of Virginia by adding teaching days to the school calendar or extending the length of the teaching day.

C. Nothing in these regulations shall preclude a school division from making up missed teaching days by providing students with teaching hours equivalent to such missed teaching days.

## **Board of Education**

### **PROPOSED REGULATIONS GOVERNING REDUCTION OF STATE AID WHEN LENGTH OF SCHOOL TERM BELOW 180 TEACHING DAYS OR 990 TEACHING HOURS (8 VAC 20-520-10 et seq.)**

#### **8VAC20-520-40. Waivers for a Declared State of Emergency.**

A. The Board of Education may waive the requirement that school divisions provide additional teaching days or teaching hours to compensate for closings resulting from a declared state of emergency.

B. If the local school board desires a waiver for days missed as the result of a declared state of emergency, it shall submit a request for a waiver to the Board of Education. The request shall include evidence of efforts that have been made by the school division to reschedule as many days as possible.

C. The division superintendent and the chair of the local school board shall certify that every reasonable effort for making up lost teaching days or teaching hours was exhausted before requesting a waiver of the requirement.

D. The Board of Education authorizes the Superintendent of Public Instruction to approve, in compliance with these regulations, reductions in the school term for a school or the schools in a school division.

E. If the waiver is denied, the school division shall make up the missed instructional time in accordance with 8VAC 20-520-30 of these regulations and § 22.1-98 of the Code of Virginia.

#### **8VAC20-520-50. Funding.**

A. There shall be no proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund if a local school division:

1. Completes instructional time in accordance with 8VAC 20-520-30 and § 22.1-98 of the Code of Virginia; or

2. Obtains a waiver for closings resulting from a declared state of emergency in accordance with 8VAC20-520-40.

B. The local appropriations for educational purposes necessary to fund 180 teaching days or 990 teaching hours shall not be proportionally reduced by any local governing body due to a reduction in the length of the term of any school, if the missed days are made up in accordance with 8VAC 20-520-30, or the schools in a school division have been granted a waiver in accordance with 8VAC 20-520-40.

#### **8VAC20-520-60. Administration.**

**Board of Education**

**PROPOSED REGULATIONS GOVERNING REDUCTION OF STATE AID  
WHEN LENGTH OF SCHOOL TERM BELOW 180 TEACHING DAYS OR 990  
TEACHING HOURS (8 VAC 20-520-10 et seq.)**

A. The Virginia Department of Education shall annually notify local school divisions of the provisions of these regulations and the Virginia Code regarding reductions in the length of the school term.

B. Local school division superintendents shall certify by April 15 of each school year that they have read and complied with these provisions and are implementing a plan for making up any missed time that has not been waived in accordance with these regulations.



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## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Education
<b>Virginia Administrative Code (VAC) citation</b>	8VAC 20-520
<b>Regulation title</b>	Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours
<b>Action title</b>	To clarify schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations.
<b>Document preparation date</b>	June 6, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

The Board of Education promulgated the Regulations Governing Reduction of State Aid When Length of School Term Below 180 School Days, 8 VAC 20-520, in response to § 22.1-98 of the Code of Virginia. The 2004 Virginia General Assembly passed three bills that amended this section of the Code and make the changes effective upon passage of the bills. The bills were HB 1256 (Van Landingham), SB 452 (Whipple), and HB 575 (Hamilton). HB 1256 and SB 452 clarified the schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding would not be reduced because of school closings due to severe weather conditions or other emergency situations. HB 575 permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency.

HB 575 and SB 452 had emergency enactment clauses and were effective upon passage. HB 1256 and SB 452 required the Board of Education to promulgate regulations to implement the provisions to be effective within 280 days of enactment. Emergency regulations became effective on February 25, 2005 and will expire on February 25, 2006.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

The Code of Virginia, § 22.1-16, vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. Section 22.1-98 of the Code of Virginia prescribes the circumstances under which state aid shall be reduced when the length of the school term falls below 180 days or 990 hours. This code section, as amended by the 2004 General Assembly, required the Board of Education to promulgate regulations within 280 days of its enactment. Emergency regulations were promulgated on February 25, 2005 and are set to expire on February 25, 2006. In order to effectuate the requirements of § 22.1-98, as amended, final regulations must be promulgated before February 25, 2006.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The purpose of this proposed permanent regulation is to clarify the schedule of makeup days and circumstances in which a waiver may be granted by the Board of Education so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations. The proposed actions also implement the legislation that permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency.

### Rationale for using fast track process

*Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*



The fast track process is applicable because the promulgation of this regulation is noncontroversial.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

The proposed regulation incorporates the changes required by the amendments to the Code of Virginia and clarifies certain other requirements. The changes include definitions of "severe weather conditions or other emergency situations" and "declared state of emergency." The proposed regulation also includes authorization for school divisions to make up missed teaching days by providing equivalent teaching hours, specific requirements for the number of teaching days or teaching hours that must be made up based on the number of days a school has been closed, and a provision for the Board of Education to waive the requirement that school divisions provide additional teaching days or hours to compensate for school closings resulting from a declared state of emergency. Further, the proposed regulation authorizes the Superintendent of Public Instruction to approve reductions in the school term without a proportionate reduction in the amount paid by the Commonwealth from the Basic School Aid Fund.

The proposed regulation requires local school divisions to include in requests for waivers evidence of efforts that have been made by the school division to reschedule as many days as possible and to certify that every reasonable effort has been made to make up lost teaching days or hours before requesting a waiver of this requirement.

The proposed permanent regulation mirrors the emergency regulation that was approved by the Board at its January 12, 2005 meeting and is in effect now.

### Issues

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
  - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
  - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The emergency regulations will expire on February 25, 2006, therefore, permanent regulations must be promulgated. The advantage to all of the parties is that a permanent regulation will be in effect that will comport with the Code of Virginia in addressing the reduction of state aid when the length of the school term is below 180 teaching days or 990 teaching hours due to school closings as a result of severe weather conditions or other emergency situations.

### Financial impact

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</b>	None
<b>Projected cost of the regulation on localities</b>	None
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	None
<b>Agency's best estimate of the number of such entities that will be affected</b>	None
<b>Projected cost of the regulation for affected individuals, businesses, or other entities</b>	None

This regulation imposes a new certification requirement on school divisions. (See paragraph B of 8VAC20-520-60.) Currently, school divisions provide numerous data to the department related to financial information, compliance reporting, and state report card information. These data are transmitted in a variety of forms, ranging from web-enabled data base collections to hard copy submissions.

School divisions will be required to track missed school time and plans for make up time in a format consistent with the department's certification requirements. Even though school divisions already track missed instructional time and make-up days, the regulations will still impose additional requirements because of issues related to conformity with state certification parameters.

It is expected that the administrative burden due to the new reporting requirement could be absorbed within existing resources at the both the state and local level. However, it should be noted that additional reporting requirements put a great administrative burden on school divisions, especially those that are small.

#### Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

There are no real alternatives. If a permanent regulation is not promulgated by February 25, 2006, the emergency regulation will expire and will revert back to a regulation that does not comport with the Code of Virginia.

### Family impact

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

There should not be any impact on the institution of the family or family stability. The Board of Education had promulgated an emergency regulation to address requirements that were passed by the 2004 General Assembly. That regulation will expire on February 25, 2006. This regulation makes the provisions of the emergency regulation permanent.

### Detail of changes

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

(a) The chart below details all of the changes that have been made between the pre-emergency regulation and the proposed regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
None	5	No definitions are provided.	Section 5 provides definitions to clarify the meaning of the regulations.
None.	20	The regulation itself does not state the length of the school year term.	Section 20 prescribes the length of the school term in teaching days and teaching hours as prescribed by the Code of Virginia and the <i>Regulations Establishing Standards for Accrediting Public Schools in Virginia</i> , 8 VAC 20-131-150.
10	30	Prescribes how days may be made up.	Section 10 is being repealed in its entirety. Section 30 prescribes how days may be made up in accordance with the changes to the Code of Virginia. Section 30 clarifies how school divisions may extend teaching days to make up for lost instructional time. Section 30 also clarifies that school divisions are not precluded from making up missed teaching days by providing students with teaching hours equivalent to such missed teaching days.
10	40	Prescribes the conditions and process for the granting of a waiver.	Section 10 is being repealed in its entirety. Section 40 prescribes the conditions and process for the granting of a waiver in accordance with the changes to the Code of

			Virginia.
10	50	There is no provision regarding funding.	Section 10 is being repealed in its entirety. Section 50 prescribes the conditions that must be met in order not to have a reduction in funding.
10	60	There is no provision regarding administration.	Section 10 is being repealed in its entirety. Section 60 prescribes notification requirements for the Virginia Department of Education and certification requirements for local school divisions.

(2) The proposed regulation mirrors the emergency regulation. Therefore, no changes have been made since the publication of the emergency regulation.